



REMARKS

Claims 1-16 and 21-24 have been examined. Claims 17-20 have been canceled, without prejudice, pursuant to a restriction requirement. Claims 1, 8, 9 and 21 have been amended, and new claims 25-28 have been added. Reconsideration of the claims, as amended, is respectfully requested.

Election/Restrictions

Claims 17-20 were subjected to a restriction requirement in a telephone conversation with the examiner on 10/30/01. In that telephone conversation, counsel for the applicants agreed to elect claims 1-16 and 21-24, without traverse. It appears that the Office Action contains a typographical error on pages 2 and 3 by including claims 21-24 in the restricted claims, particularly since claims 21-24 were substantively examined in the Office Action and were indicated to be examined on the "Office Action Summary" sheet.

Claim Rejections – 35 USC 112

Claim 9 has been rejected under 35 USC 112, second paragraph, as being indefinite. More specifically, the office action objected to the claiming of a keyed aperture. Claims 8 and 9 have been amended to recite that the arm defines the keyed aperture. Hence, this rejection is overcome.

Claim Rejections - 35 USC 102

Claims 1, 2, 6-8, 10, 16 and 21-23 have been rejected under 35 USC 102(e) as being anticipated by McGrath. This rejection is respectfully traversed.

As filed, independent claim 1 claims a sneeze guard that comprises at least one post and a bracket assembly coupled to the post such that the bracket assembly is movable relative to the post. Further, the bracket assembly includes a locking

mechanism that is operable to lock the bracket assembly to the post at a certain location on the post. Also, a panel is coupled to the bracket assembly. Hence, an important feature of claim 1 is that the bracket assembly may be moved along the post and then locked at a certain location. In this way, the panel may be moved along the length of the post and then locked into place, thereby providing an easy and convenient way to adjust the position of the panel along the post.

In contrast to the sneeze guard of claim 1, the McGrath patent describes a sneeze guard that is incapable of providing such features. For example, as characterized in the office action, elements "20, 22 make up each bracket and are shown to be connected to each side in fig 1." However, such brackets are not movable along the post, nor can they be locked to the post at a certain location on the post as claimed in claim 1.

However, in order to further clarify the claims, claim 1 has been amended to recite that the post has a longitudinal axis defining a length, and that the bracket assembly is moveable lengthwise along the longitudinal axis of the post. Because the bracket assembly of McGrath may only pivot and not move lengthwise along the post, claim 1 is distinguishable for this additional reason. Hence, it is respectfully requested that the section 102 rejection of independent claim 1 and dependent claims 2, 6-8, 10 and 16 be withdrawn.

Independent claim 21 claims a method for protecting displayed food items and uses a sneeze guard as in claim 1. Hence, claim 21 which has been amended in a similar manner is distinguishable and in condition for allowance. Claims 22 and 23 depend from claim 21 and are distinguishable for at least the same reasons. Further claim 22 claims that the bracket assembly is movable along the post and is separately distinguishable.

Claim Rejections - 35 USC 103

Claim 11 has been rejected under 35 USC 103(a) as being unpatentable over McGrath. Claim 11 depends from claim 1 and is distinguishable over McGrath for

at least the reasons previously described. Hence, is it respectfully requested that this rejection be withdrawn.

Claims 3-5 and 24 have been rejected under 35 USC 103(a) as being unpatentable over McGrath and O'Brien. Claims 3-5 depend from claim 1 and claim 24 depends from claim 21 and are distinguishable over McGrath for at least the reasons previously described and are in condition for allowance.

Moreover, no teaching or suggesting exists in the cited art to replace the pivoting brackets 20, 22 of McGrath with a bracket assembly as taught in O'Brien because the McGrath sneeze guard device is only taught to pivot, not to move lengthwise along the post. Further, even assuming, *arguendo*, that the O'Brien bracket were substituted for brackets 20,22 of McGrath, then the device of McGrath would either be inoperable because it would be incapable of being coupled to a support surface, or its principle of operation would change since it would no longer pivot. As recited in MPEP 2143.01, if a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, or would change the principle of operation of the prior art invention being modified, then there is no suggestion or motivation to make the proposed modification and the teachings are not sufficient to render the claims prima facie obvious. Hence, no teaching or suggestion exists for replacing the brackets of McGrath with the bracket assembly of O'Brien. As such, a prima facie case of obviousness has not been established, and it is respectfully request that the section 103 rejection of claims 3-5 and 24 be withdrawn for this additional reason.

Claim 12 has been rejected under 35 USC 103(a) as being unpatentable over McGrath in view of Goldsmith. Claim 12 depends from claim 1 and is distinguishable over McGrath for at least the reasons previously described. Because the Goldsmith patent also fails to teach or suggest such limitations, claim 12 is distinguishable over McGrath in view of Goldsmith. Hence, is it respectfully requested that this rejection be withdrawn.

Added Claims

Dependent claim 9 was rejected only under 35 USC 112, second paragraph. As such, new claim 25 has been added to rewrite claim 9 in independent form and to overcome the section 112, second paragraph rejection as described above. Hence, claim 9 is in condition for allowance.

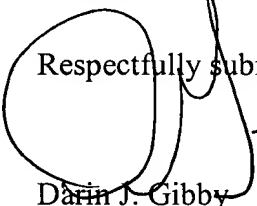
Dependent claims 13, 14 and 15 were indicated to contain patentable subject matter. Hence, new claims 26-28 have been added to rewrite claims 13-15, respectively, in independent form. Hence, claims 26-28 are in condition for allowance.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,


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